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| 10/582,806 | 02/08/2007 | Brent Carter | 1567-6 PCT/US | 4583 |
| 23869 7590 09/11/2008 HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791 | | | | |
| EXAMINER | | | | |
| KELLER, MICHAEL J | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/582,806

Applicant(s)

CARTER ET AL.

Examiner

Michael J. Keller

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-893)
Paper No(s)/Mail Date 06/14/2006
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION



Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 1 recites the limitation "the portable body" in 3. There is insufficient antecedent basis for this limitation in the claim. Is the portable body the same, or in addition to, the portable trolley?
5. Claim 5 recites the limitation "the connection means" in line 1 and "the pivot arm" in line 2. There is insufficient antecedent basis for these limitations in the claim. Does applicant intend this to depend on claim 4?
6. Claim 17 provides for the use of a pair of boom gate apparatus, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced. Further, grammatically, the claim is confusing—"pair of apparatus is block..."

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title

8. Claim 17 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966)

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. **Claims 1-3 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Hovland (US 3,886,519).**

Regarding **claim 1**, Hovland discloses a boom gate apparatus comprising: a portable trolley 10 (Fig. 2); an elongate gate 32; actuating means 40; and a hand held controller 56.

Regarding **claim 2**, Hovland discloses a single pair of wheels 13 (Fig. 3) and a handle 12.

Regarding **claim 3**, Hovland discloses that the gate is a single elongate arm.

Regarding **claim 14**, Hovland discloses a traffic indicator comprising flashing lights 28/30 (Col. 2 Lines 11-15).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. **Claims 1, 3, 5, 6, 9, 10-12 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner et al. (US 4,681,479) in view of Carr (US 4,658,543).**

Regarding **claim 1**, Wagner discloses a boom gate apparatus comprising: a portable trolley 26; an elongate gate 14; and actuating means 20. Wagner does not disclose a hand-held controller or transmitter.

Carr discloses a boom gate apparatus comprising: an elongate gate 15; actuating means 36; and a hand held controller (radio controller; Col. 3 Lines 1-7).

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to provide the boom gate of Wagner with the hand held radio controller of Carr, in order to eliminate the need for an external control line to connect to a controller, while still providing convenient actuation.

Regarding **claim 3**, Wagner discloses a single elongate arm 14.

Regarding **claim 5**, Wagner discloses a connection sleeve 66 releasably connecting the elongate gate to a pivot arm 64.

Regarding **claim 6**, Examiner takes Official Notice that the use of a splined or keyway arrangement for connecting a shaft to a sleeve was known in the art at the time of the invention. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to use a splined or keyway arrangement for connecting the elongate gate to the sleeve in order to provide a secure and easily releasable connection.

Regarding **claim 9**, Carr discloses a housing 16 for the actuating means, but does not disclose a receiver to receive signals from the controller. However, a receiver is an inherent feature of the device, because in all cases a receiver would be required in order for the signals from the controller to reach the actuating means.

Regarding **claim 10**, Carr discloses a radio frequency (RF) controller.

Regarding **claims 11 and 12**, Examiner takes Official Notice that the use of infrared signals in place of radio signals, as well as transparent windows to allow infrared signals to reach a receiver, were known in the art at the time of the invention.

All the claimed elements were known in the prior art as evidenced above, and one of ordinary skill in the art could have combined the elements as claimed, or substituted one known element for another, using known methods with no change in their respective functions. Such a combination would have yielded predictable results to one of ordinary skill in the art at the time the invention was made, since the elements perform as expected and thus the results would be expected.

Regarding **claim 18**, Examiner takes Official Notice that it was known in the art at the time of the invention to use a boom gate to block traffic on a road while allowing

pedestrians to cross the road and then raise the boom gate to allow the traffic to continue on the road. Does your reference teach a method of use? If not, state that the method is inevitably taught by the structure, in that that it was known in the art at the time of the invention to use a boom gate to block traffic on a road while allowing pedestrians to cross the road and then raise the boom gate to allow the traffic to continue on the road.--- what you have above)

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to use the boom gate apparatus of Wagner and Carr in this manner, in order to protect pedestrians from vehicular traffic.

13. Claims 4, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner et al. (US 4,681,479) in view of Carr (US 4,658,543) as set forth above, and further in view of Baump et al. (US 3,975,861).

Regarding **claim 4**, the combination of Wagner and Carr discloses a boom gate apparatus as set forth above, wherein the actuating means is an electric motor, but does not disclose a belt or chain drive connecting the motor to the pivot arm.

Baump discloses a boom gate apparatus comprising an elongate arm 2 mounted on a pivot arm 54 coupled to an electric motor 14 by a belt drive (Fig. 2).

All the claimed elements were known in the prior art as evidenced above, and one of ordinary skill in the art could have combined the elements as claimed, or substituted one known element for another, using known methods with no change in their respective functions. Such a combination would have yielded predictable results to

one of ordinary skill in the art at the time the invention was made, since the elements perform as expected and thus the results would be expected.

Regarding **claim 7**, the pivot arm is normal to the elongate gate (Wagner, Fig. 2; Baump, Fig. 2).

Regarding **claim 8**, Wagner discloses a battery powered motor (see Abstract).

14. **Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner et al. (US 4,681,479) in view of Carr (US 4,658,543) as set forth above, and further in view of Wilson (US 2003/0112121).**

Regarding **claim 13**, Carr discloses a remote controller such as used on garage doors (Col. 3 Line 7), but does not disclose a receiver which sends a signal to a second receiver to control the motor.

Wilson discloses a garage door operating system comprising a control module 10 mounted inside a housing 20; the control module includes a receiver 12, a transmitter 26 and an actuator 16. The receiver 12 receives signals from a remote controller 42 and sends radio signals via the transmitter 26 to a receiver 34 which sends signals to a controller 36 which activates an actuator 38. The actuator 38 can also be activated by actuator 16 which sends signals via the transmitter 26.

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to provide the boom gate apparatus of Wagner and Carr with the control module 10 and receiver 34 of Wilson. The motivation for doing so would have been to allow the gate to be controlled by a remote control as well as an actuator located on the housing.

15. Claims 2, 14, 15, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner et al. (US 4,681,479) in view of Carr (US 4,658,543) as set forth above, and further in view of Yang (US 5,294,138).

The combination of Wagner and Carr discloses a boom gate apparatus as set forth above, having handles 60 (Wagner, Fig. 1), but does not disclose wheels for the trolley, or a traffic indicator.

Regarding **claim 2**, Yang discloses a boom gate apparatus comprising a trolley 20 having wheels 112 and a handle 105.

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to provide the trolley of Wagner and Carr with the wheels of Yang, in order to allow the trolley to roll instead of being carried or dragged.

Regarding **claims 14, 15, 19 and 20**, Yang discloses a traffic indicator comprising a green light which is activated when the gate is up and a red light which is activated when the gate is down (see Summary of the Invention).

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to provide the boom gate of Wagner and Carr with the traffic indicator of Yang, in order to help control traffic (see Yang, Background of the Invention).

16. Claims 16, 17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner et al. (US 4,681,479) in view of Carr (US 4,658,543) as set forth above, and further in view of Flores (US 5,442,878).

The combination of Wagner and Carr discloses a boom gate apparatus as set forth above, but does not disclose a second boom gate blocking an adjacent lane.

Flores discloses a pair of boom gates blocking two lanes of traffic which move simultaneously.

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to provide a second boom gate in order to block traffic in two directions.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Keller whose telephone number is 571-270-5219. The examiner can normally be reached on Monday - Friday 9:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on 571-272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KATHERINE W MITCHELL/

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Supervisory Patent Examiner, Art
Unit 3634

/M. J. K./
Examiner, Art Unit 3634